

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

**Memorandum to RNC Chief Counsel**

**This is a brief summary of the Texas congressional redistricting situation as of this last Tuesday, June 7, 2011.**

**It is important to keep in mind that a bill has not been passed out of both Chambers and there is still time for improvements to be made – although at this writing, that possibility seems remote.**

**The last plan examined, Texas Legislative Council's Plan C136, contained significant retrogression of the minority voting age population in several districts and failed to create any new Latino districts which contain a majority of Latino voters. There is no new Latino district in the Dallas-Fort Worth area – with all the Latino and African populations not contained in Congresswoman Johnson's District (30-D) being fractured between GOP districts in the area.**

**Although the previous problem of retrogression of Latino voting strength in Gene Green's Houston District 29 has been solved; it has been done at the expense of a decrease in the Latino strength in African-American Congresswoman Jackson-Lee's 29<sup>th</sup> District. Latinos make up an important component of the voting age population in this coalition district – a fact that the GOP used to justify its configuration containing two African-American Houston districts in 2003. We are worried that DOJ will strongly object to this retrogression.**

**Congressman Gonzales' 20<sup>th</sup> District in San Antonio has been significantly retrogressed from benchmark and, when we last looked at it, the Latino voter registration was below 50% (which may have been corrected by now). Even so, there is sufficient cause for an objection by DOJ.**

**The newly created 35<sup>th</sup> District, which runs from San Antonio to Austin, has lower Latino strength than is possible – including Latino voter registration well under 50%. It is clearly possible to create a much stronger district.**

All these deficiencies can be corrected, although the creation of a new Dallas-Ft. Worth Latino-African American coalition district (with Latino voter registration in the mid-40% range, but much higher than either the African-American or Non-Hispanic White Democrat voter registration percentages) would come at the expense of the creation of an additional GOP seat.

The Democrats will have no trouble pointing to the fact that the GOP is well aware of ALL the possibilities available to fix these deficiencies, with many of them already on our record. In addition, MALDEF has already submitted its own maps into the record. Proving intent will be no problem for them.

All these deficiencies point to a certainty rejection of the plan by DOJ, as well as likely rejection by the District Court in the District of Columbia (DCDC). There is little doubt that if Texas' Attorney General files for preclearance in the DCDC (even if he files simultaneously at DOJ), there will be a full trial with a final decision not be expected until late November.

The only way that preclearance could be obtained in a shorter timeframe would be to enact a plan with two new Latino districts and all other districts at benchmark. This would create a good possibility that the DCDC (or even DOJ, for that matter) would approve the map in a summary judgment, as there would be nothing left for DOJ to legitimately oppose in the DCDC setting. If preclearance is only pursued at DOJ there will be, most likely, a longer list of objections. This distinction is important if the plan is drawn in either a federal or state court in Texas.

All this points to a high probability that the congressional map used in the 2012 elections will be drawn by a 3-judge federal panel before litigation is concluded in the DCDC, as even a plan drafted by a Texas state court must be precleared). If the Texas federal court drafts a map, it is required to remedy all DOJ's objections in its map – as it has no jurisdiction over Section 5 of the VRA. If litigation is not completed in the DCDC, it would not be compelled to give deference to the new plan enacted by Texas, but not precleared.

**If the state court drafts a map favorable to the GOP (it must also remedy DOJ's objections), there is little chance of DOJ preclearance. If it drafts a map favorable to the Democrats it will, most likely, be swiftly precleared.**

**The Texas Legislature is clearly about to embark into dangerous legal waters unless significant modifications are made to the map. These changes are not technically difficult, but may be difficult from a political standpoint.**

**I feel that the Texas Attorney General's Office understands these perils, but may not be in a position to fully guide its client, the Legislature, into a safe harbor – one into which they do not wish to sail.**

**It is important to remember that, as is the case with homeland security, we must be 100% right to win; but the other side only needs one good mistake on our part to stall us and decrease our possible seat gains by forcing the remap into the Texas federal court.**

**So far the Democrats and their allies are reported to be delighted with the GOP's map, as they think it can be easily "blown up", and will not serve as a counterweight to our losses in the Illinois Democratic redraw.**

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